

Washington County Land Use Authority Meeting
December 1, 2010
(Recording available)

The Washington County Land Use Authority Meeting was held on Tuesday, December 1, 2010 at the Washington County Administration Building, 197 E. Tabernacle, St. George, Utah. The meeting was convened at 3:00 p.m. by Chairman Mike Stucki. Commissioners present: Doug Wilson, Kim Ford, Debora Christopher, and Dave Everett. Also present: Deon Goheen, Planning & Zoning Administrator; Todd Edwards, County Engineer, John Willie, Senior Planner; Rachelle Ehlert, Deputy Attorney; Kurt Gardner, Building Official; Kim Hafen, Clerk/Auditor and Darby Klungervik, Planning Secretary.

Excused: Julie Cropper, Joann Balen, Rick Jones

Audience attendance: Jerry Eves, Denise Purdne, Mark Weston, Kurt Allen, Steven L. Fassler and Steve Prows

Chairman Mike Stucki led the audience in the Pledge of Allegiance and explained meeting protocol.

Item #1. SPECIAL MEETING: **STAFF COMMENTS.** Review staff comments for each item listed below. Staff initiated.

Item #2. CONDITIONAL USE PERMIT. Request permission to locate four (4) wind towers on State Land near Anderson Junction. Jerry Eves/Southwest Wind Energy, applicant and Bob Mason, agent.

The Planner reminded the planning commission that they tabled this item at the previous meeting to allow for staff and applicant to meet, going over the checklist from Chapter 25 of the Washington County Zoning Ordinance and review requirements. ***Chapter 25 Item D. Conditional Use Permit. Following the provisions of Chapter 18, Washington County Code, additional or more thorough consideration shall be given to the following as the County determines whether the project needs to be approved, denied, or conditionally approved.*** This is a review for a wind energy project located at Anderson Junction. The four (4) towers will be located on SITLA and they have issued a letter stating they have accepted the application for processing, supporting their efforts, and asking for favorable consideration on the CUP. Previously reviewed items included the application, SITLA letter, public notice photo, and a waiver. The noise analysis with supporting documentation was resubmitted and a letter from a “peer review” should be provided at this meeting. The shadow flicker analysis has been provided in a more complete format, FAA letters, environmental studies, right-of-ways and visual impacts (2 pictures instead of 4). After meeting with the applicant they indicated they could address all the issues, scheduling another staff meeting on Tuesday at 10:00 am. Additional hand written notes were made to their response and changes to the noise review. The applicant submitted the feasibility study, which was mentioned several times in their application packet. It was decided that they would move the towers instead of going through the Forest Service process and the BLM permitting on setbacks has not been submitted as of yet. The commission may need to address this on a “subject to” basis. The documentation on waivers should be completed prior to County Commission action, meeting the requirement of filing the waiver with the Records Office. Previously there was a petition submitted by the property owners at Anderson Junction who are in opposition to this project. **The commission will need to make findings supporting their decision.**

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Todd Edwards, County Engineer, stated that staff met with the applicant and they did submit a letter from the BLM, however they still need a letter from the Forest Service. They did move the location of two of the turbines so the blades would not cross over onto the Forest Service property. The applicant also submitted a noise study, which does state that they will not exceed the county's thresholds. Mr. Edwards said he thought that was sufficient. Staff received a waiver from the residential property owner; his only concern was the fact that the property was jointly owned by the husband and the wife and only the wife signed the waiver. To his understanding the husband is incapacitated; Mr. Edwards said the county may want to see some type of power of attorney. A shadow flicker study was submitted and did show a flicker crossing the freeway for about fifteen minutes, fifteen days a year; therefore, he did not think that was a significant problem. The applicant submitted two photos of the visual impact, instead of the required four, but staff felt like that was adequate. Staff wanted to see if there would be any adverse effects on microwave transmissions and a study was done and it was determined that there would be no adverse electromagnetic fields or problems with microwave transmissions. The decommissioning concerns will be worked out with SITLA, who is the landowner. Therefore the lease with SITLA will need to address the decommissioning of the towers and the county will need a copy of that lease.

The staff reviewed the ordinance pertaining to nuisances in regards to decommissioning the towers if they were ever not in use. They also discussed Toquerville being in close proximity to this project and determined they are aware of this project. The risk to Bald Eagles was addressed and the applicant did submit an avian bird and bat study which indicated the number of kills would not be significant. The blade speed and sound was addressed and the county engineer explained that they actually spin slowly in comparison to the small turbines and the sound should travel mostly north.

Jerry Eves, applicant, brought an email from the man doing his peer review and distributed it to the commission. He added the letter from the Forest Service is in process. He clarified the BLM's letter; reading a paragraph from the letter. He showed the transmission lines to the commission on his site plan and explained that they would be using the existing lines. In response to the commission, he said they do intend to expand in the future; this site could eventually have fifty (50) to a hundred (100) towers. He noted Toquerville's permit was issued subject to the county's approval.

The commission and staff discussed FAA regulations and it was determined that the applicant has been in contact with the FAA and they are requiring lights on the towers. The FAA has also issued the applicant permits for those lights.

Deon Goheen, Planning Administrator, noted that the applicant must submit the letters from the Forest Service, SITLA and BLM for review, prior to the County Commission meeting, in the proper format to be filed with the recorder's office.

Kurt Allen, engineer for the project, said he has been in contact with Steve Lewis regarding fire protection for this project.

Facts/Findings:

- The use complies with all applicable provisions of Washington County ordinances, state and federal law
- The use is not detrimental to the public health, safety and welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity
- It does not cause unreasonable risks to the safety of persons or property because of vehicular traffic or parking, or other similar unreasonable risks
- It does not unreasonably interfere with the lawful use of surrounding property
- The use is consistent with the characteristics and purposes stated in the general plan
- The use is consistent with the characteristics and purposes stated for the zone
- Traffic safety conditions are not adversely affected by the use. The existence or need for dedicated turn lanes, pedestrian access, and capacity of the existing streets shall be reviewed
- Utility capacity is adequate
- Emergency access is adequate
- The location and design of parking both on site and off street is adequate
- A plan for fencing, screening, and landscaping to separate the use from adjoining uses and mitigate the potential for conflict in uses is adequate
- Exterior lighting is adequate and does not unduly disturb the surrounding area
- Signage is adequate and in compliance with title 10, chapter 19 of this code
- Requirements for the management and maintenance of facilities is adequate
- The use does not result in a situation which will create a need for essential services which cannot be reasonably met by local service providers, including roads and access for emergency vehicles and residents; fire protection; police protection; schools and school busing; drinkable water; sewer; storm drainage; and garbage removal, in fact the use is creating a service

The following items were reviewed and the use was found to be in compliance with the county ordinance. These are the facts and findings derived from Title 10, Chapter 25 (10.25.040, D):

- **Project Rationale**, including estimated construction schedule, project life, phasing, and

likely buyers or markets for the generated energy

- **Siting Considerations**, such as avoiding areas/locations with a high potential for biological conflict such as wilderness study areas, areas of critical environmental concern, county and state parks, historic trails, special management areas or important wildlife habitat; avoiding visual corridors that are designated by the County after analyzing the applicant's wind energy system proposal and considering public hearing comments; avoiding areas of erodible slopes and soils, where concerns for water quality, landslide, severe erosion, or high storm water runoff potential have been identified; and, avoiding known sensitive historical, cultural or archeological resources
- **Site and Development Plans**, which locate and describe the project boundaries, all existing and proposed structures, setbacks, access routes, proposed road improvements, existing inhabitable structures and residentially-zoned lots within 1.25 miles of the project, existing utilities / pipelines / transmission lines, proposed utility lines / structures, existing topography, existing and proposed drainage ways, proposed grading, natural vegetation removal, revegetation actions, dust and erosion control, any floodplains or wetlands, and other relevant items identified by county staff or planning commission. All maps and visual representations need to be drawn at an appropriate scale
- **Analysis of Local Economic Benefits**, describing estimated: project cost, generated property taxes and local sales taxes, percent of construction dollars to be spent locally, and the number of local construction and permanent jobs
- **Visual impacts, appearance and scenic view sheds**. Potential visual impacts include, but are not limited to, wind towers, rotors, above-ground electrical lines, accessory structures, access roads, utility trenches and installations, and alteration of vegetation. The applicant must provide a viewshed analysis of the project, including visual simulations of the wind energy systems and any significant planned structures or improvements, such as new roads on a hillside or substations. The number of visual simulations shall be sufficient to provide adequate analysis of the visual impacts of the proposal, which shall be from no less than four vantage points that together provide a view from all sides of the project. More visually-sensitive proposals may require analysis from significantly more vantage points, such as different distances and sensitive locations. The Planning Commission may also require a Zone of Theoretical Visibility/ Zone of Visual Impact (ZVI) Analysis, which is a 360-degree computer analysis to map the lands within a defined radius of a location that would likely be able to see an object—in this case the proposed wind energy system (or a portion thereof)
- **Wildlife habitat areas and migration patterns, including avian and bat data for the project area**. Specifically include information on any use of the site by endangered or threatened species and whether the project is in a biologically significant area. If threatened or endangered species exist, consultation with USDFW will be necessary. A

plan for ongoing monitoring after the project is operational for bird, bat, or other wildlife impacts may be required

- **Environmental Analysis.** The applicant shall meet all State and Federal guidelines, laws, and regulations
- **Solid waste or hazardous waste.** The application must include plans for the spill-prevention, clean-up, and disposal of fuels, oils, and hazardous wastes, as well as collection methods for solid waste disposal. Verification that all construction waste generated from the project has been removed from the area will be required before a certificate of occupancy may be issued
- **Height restrictions and FAA Hazard Review.** Compliance with any applicable airport overlay zoning requirements and the ability to comply with FAA regulations pertaining to hazards to air navigation must be demonstrated
- **Transportation Plan,** for Construction and Operation Phases. Indicate by description and map what roads the project will utilize during the construction and operation/maintenance phases of the project, along with their existing surfacing and condition. Specify any new roads and proposed upgrades or improvements needed to the existing road system to serve the project (both the construction and O&M periods)—remember to identify needed bridges, culverts, livestock fence crossings (gates and cattleguards), etc. Also identify all areas where modification of the topography is anticipated (cutting/filling) to construct or improve the roadways. Address road restoration or maintenance needs associated with the construction, ongoing maintenance/repair, and potential dismantling of the project. Provide projected traffic counts for the construction period, broken down by the general type/size of vehicles, and identify approximately how many trips will have oversized or overweight loads. The County may require financial guarantees to ensure proper repair/restoration of roadways or other infrastructure damaged or degraded during construction or dismantling of the project. To provide a proper reference for restoration, the “before” conditions of the roadways and other infrastructure must be documented through appropriate methods such as videos, photos, and written records
- **Public Safety.** Identify and address any known or suspected potential hazards to adjacent properties, public roadways, communities, aviation, radar systems, etc. that may be created by the project
- **Noise limitations.** Submit sufficient information regarding noise, so as to demonstrate compliance with 10.25.040(B)(5)
- **Shadow flicker.** Identify the potential of any shadow flicker effects from the project and provide sufficient documentation to demonstrate compliance with 10.25.040(B)(7)(e)

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- **Telecommunications interference.** Demonstrate that the potential for adverse electromagnetic fields and communications interference generated by the project has
- been evaluated and determined unlikely—conduct a Licensed Microwave Search and Worst Case Fresnel Zone (WCFZ) Analysis, including consultations with the National Telecommunications Information Administration (NTIA), Interdepartmental Radio Advisory Committee (IRAC) and the National Weather Service
- **Agreement/easement for life of the project and final reclamation.** If the land on which the project is proposed is to be leased, rather than owned, by the wind development company, all property within the project boundary must be included in a recorded easement(s), lease(s), or consent agreement(s) specifying the applicable uses for the duration of the project
- The possibility of Toquerville annexing this property was considered
- The proposed project meets national goals for creating renewable energy, in non traditional ways; ways that are self sustained

Motion was made by Commissioner Christopher to recommend approval of the Conditional Use Permit to locate four (4) wind towers on State Land near Anderson Junction, based on the facts and findings, subject to meeting the requirements of the Forest Service, having a peer review, and submitting the lease agreement with SITLA, which will be for the life of the project and include information pertaining to the decommissioning of the project. Commissioner Wilson seconded the motion, with all four (4) commissioners voting aye.

Item #3. WORK MEETING: DISCUSSION ITEM/WIRELESS COMMUNICATION FACILITIES. Review and consider amendment on wireless telecommunication facilities to establish minimum requirements and regulations of such systems, Chapter 21 of the Washington County Zoning Ordinance. County initiated.

The Planner said after the previous meeting, all the case law and additional information provided by County Deputy Attorney, Rachelle Ehlert was once again e-mailed to the commissioners. Staff has been working with the planning commission on this ordinance for the past 8 months, since the implementation of pending Land Use Ordinance Review presentation on wireless communication facilities on March 9, 2010. This amendment will be for wireless communication facilities Chapter 21 of the Washington County Zoning Ordinance. Previously ordinance samples were provided via e-mail and staff has recommended something similar to what St. George City has recently adopted. Staff agrees that these changes could be reviewed by going directly to the advertising process for a hearing on the 14th of December.

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After reviewing St. George City's ordinance the commission recommended the following changes:

- 10-21-1 (A) will be changed to read: The purpose of this chapter is to address planning issues, particularly aesthetic concerns, location, safety and serviceability, brought on by demand for wireless communication facilities.
- 10-21-1 (B) will be changed to read: The regulations contained herein are intended to maximize service, optimize location and minimize visual impact, where possible.....
- 10-21-4 (A) will be changed to read: Wireless communication facilities located on unincorporated land in the county, subject to complying with standards contained herein, and obtaining a lease agreement, if applicable
- 10-21-6 delete all of (A) and (B)
- 10-21-6 (C) delete the size restriction
- 10-21-7 delete all of (A)

Item #4. COMMISSION & STAFF REPORTS: General reporting on various topics. County initiated.

Commissioner Everett made a motion to adjourn the meeting. Commissioner Ford seconded the motion, with all four (4) commissioners voting aye. Chairman Mike Stucki adjourned the meeting at 5:07 p.m.

Darby Klungervik